SUPREME COURT, U. S.

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IN THE

# Supreme Court of The United States

OCTOBER TERM, 1966

No. 264

CONTRACT CARRIERS, INC. and
JOSEPH L. McCORKHILL,
*Petitioners,*

v.

JOHN ANTHONY MARKIEWICZ, a minor
by his father and next friend,
EDWARD MARKIEWICZ, and
EDWARD MARKIEWICZ, and
JENNIE MARKIEWICZ, and
THE GREYHOUND CORPORATION, and
ROBERT L. SCHLAGENHAUF,
*Respondents.*

## PETITIONERS' REPLY BRIEF

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## PETITIONERS' REPLY BRIEF

The controlling facts in this case are undisputed irrespective of Respondents' assertions. The facts found by the trial court are: the tractor-trailer was traveling twenty (20) to thirty (30) miles per hour in the righthand lane of a four-lane divided highway at night with nine (9) red lights visible five hundred feet (500') to the rear

when the truck was struck from the rear by a Greyhound bus traveling seventy-five (75) miles per hour.

Upon these facts the trial court made its determination of negligence. Petitioners sought review of this conclusion of law by the Court of Appeals. The Court of Appeals refused to review this determination because it misconstrued prior guidelines of This Court and misconceived the nature of the finding. The Court of Appeals should have determined whether the undisputed facts constituted negligence, rather than dodging the issue by saying it would not disturb the District Judge's decision unless the decision was "clearly erroneous." The doctrines set out in the Court of Appeals' opinion are applicable to findings of fact but have no application to conclusions of law. A Court of Appeals should never be bound by an erroneous view of the law held by a District Judge. Conclusions of law are either right or wrong. Upholding a District Judge's view of the law simply because two judges of the Court of Appeals say his view of the law is not "clearly erroneous" does not constitute proper review by the Court of Appeals.

Here we are confronted with the trial court's judgment that a tractor-trailer's traveling twenty (20) to thirty (30) miles per hour when struck in the rear by a speeding Greyhound bus constituted negligence. This judgment was based solely upon the so-called "slow speed" of the tractor-trailer. This judgment was reached even though the tractor-trailer had nine (9) red lights burning which were visible for five hundred feet (500') to the rear. This judgment was reached even though the tractor-trailer was traveling in the extreme righthand lane on a four-lane divided highway. This judgment was reached even though there was an unobstructed passing lane. In other words, the District Court, in interpreting the Indiana Slow Speed

Statute, decided the tractor-trailer driver was negligent solely because he was driving twenty (20) to thirty (30) miles per hour.

It is true that the truck was experiencing mechanical difficulties. But this fact is of no importance in determining negligence. It makes no difference whether the tractor-trailer was going twenty (20) to thirty (30) miles per hour because of a heavy load, because the vehicle was turning, or because there was a mechanical problem. The undisputed fact is that the vehicle was being operated at twenty (20) to thirty (30) miles per hour in the proper lane with adequate lighting and with an unobstructed passing lane when it was struck in the rear by the bus, which was traveling ten (10) miles per hour above the speed limit. These are the controlling facts and these facts are undisputed. The District Court incorrectly applied the Indiana Slow Speed Statute to these facts. This case has extended the slow speed statutes to such an extent that a driver of a tractor-trailer will never know when he is violating the law. He will never know if he is driving fast enough not to be impeding a speeding vehicle approaching from his rear. In any event, speed that impedes should only be considered in light of others lawfully using the highways. Since thirty-six (36) states have similar statutes, a proper application of these statutes is in the national interest.

The Court of Appeals failed to correct the error of law of the District Court because it misconceived its function in reviewing a court-tried negligence case. The appeals court felt that it was bound by the finding of causal negligence by the trial judge. This misconception occurred because the trial judge called "negligence" a finding of fact, when in reality it is a conclusion of law. By refusing to recognize "negligence" as a conclusion of law, the appeals court would not and did not determine from the

facts whether this conclusion was justified. This interpretation denied Petitioners effective review. Effective review does not mean a trial *de novo,* but it does mean a judicial determination as to whether findings of fact are supported by substantial evidence and, further, a judicial determination as to the correctness of the conclusions of law.

Effective review by the Courts of Appeal is to a litigant a right which should never be denied. Furthermore, so long as there are expanding dockets of negligence cases which are not effectively reviewed by Courts of Appeal, just so long will it be necessary to bring such cases to the Supreme Court upon petition. Reaffirmation of the guidelines for reviewing judge-tried cases is, therefore, not only appropriate but necessary whenever any circuit court of appeals misconceives its function or powers. Fundamental justice requires reaffirmation of these guidelines whenever an obviously incorrect result is reached, and this is particularly true when a decision will have an adverse effect on the future decisions of cases throughout the country.

The petition for certiorari has presented numerous reasons warranting review of this case. However, the most important reasons are to re-establish the guidelines to be used by the appeals courts in reviewing judge-tried cases and to correct a situation in which so obvious an injustice has been committed.

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